

Remarks

The status of the claims as originally presented in this RCE is reflected in the amendment filed August 12, 2004. An After Final Response was filed, May 10, 2005, but was not entered as it allegedly raised new issues. In the present RCE, the After Final Amendment of May 10, 2005 has also not been entered.

In the present preliminary amendment, all of the pending claims have been cancelled without prejudice or disclaimer of the subject matter therein and new claims 38 to 79 submitted in place thereof. Independent claims 38 and 59 generally relate to previously pending independent claims 28 and 19, respectively, and include the features allegedly raising the new issues noted in the Advisory Action mailed June 1, 2005. It is respectfully that the pending claims define allowable subject matter.

In the parent application, claims 19-37 were rejected under 35 USC § 103(a) as being unpatentable over Verna (USP 6,681,398) in view of Urella et al (USP 5,138,722). For reasons set forth hereafter, it is believed that the pending claims distinguish over the prior art.

The Verna reference constitutes prior art under 35 USC § 102(e) and has a utility application filing date of January 12, 1999. The present application has a filing date of August 31, 1999. It is also noted that the Verna patent claims priority from two provisional applications, namely provisional application number 60/110,468, filed on November 30, 1998 and provisional application number 60/071,119, filed January 12, 1998 (copies attached). The undersigned has obtained copies of the '468 and '119 provisional applications and has reviewed the content of thereof.

Applicants are filing concurrently herewith a Declaration under 37 CFR 132 to establish that the invention claimed in the present application was conceived prior to the effective filing date of the Verna patent. As outlined in the attached 132 Declaration, the inventors conceived of the presently claimed invention at least as early as the middle of 1998 (if not earlier), well in advanced of the January 12, 1999 utility application filing date of the Verna patent and well in

advance of the November 30, 1998 filing date of the '468 provisional application. As set forth in the attached 132 Declaration, the inventors of the present application conceived of their invention prior to the filing date of the '468 provisional application. Therefore, the subject matter described in the '468 provisional application, as well as in the Verna patent, no longer qualify as, nor constitute prior art against, the presently claimed invention. Applicants hereby expressly reserve the right and opportunity to submit additional further evidence to antedate the '119 provisional application. However, given the limited disclosure of the '119 provisional application, antedation is not believed warranted at this point. Instead, as explained below, the very limited one page disclosure set forth in the '119 provisional application is deficient in many regards and does not, when taken alone or combination with the other cited art, teach or suggest the claimed invention.

The '119 provisional application describes a "portable device with a monocular viewing piece" to be used by sporting officials during football games. The official places the device against one eye and views, through one eye, replays of select plays. The '119 provisional application also describes application of the monocular device to allow fans limited viewing opportunities. However, the monocular device described in the '119 provisional application does not include any audio capability. The monocular device does not include a speaker, nor audio inputs to permit an user to select audio information, nor describe any type of electronics that would be utilized to receive and play audio signals.

In the obviousness prior art rejection maintained in the Final Office Action, it was suggested that it would have been obvious to add the headset of Urella to the system described in the Verna patent. Applicants traversed this obviousness rejection for various reasons maintained in the After Final Amendment submitted in the parent application. Now given the even more limited disclosure of the '119 provisional application, applicants respectfully submit that it also would be non-obvious to add Urella's headset to the monocular device described in the '119 provisional application. The monocular device described in the '119 provisional application has no audio capability whatsoever. Consequently, there would be no reason to add any form of headset to the monocular device of '119 provisional application.

Further, in the Final Office Action, it is acknowledged that neither the Verna patent nor Urella patent concern auto racing, nor describe the video by a camera positioned within a vehicle at an auto race. In fact, neither Verna nor Urella describe anything related to auto racing, whether the camera be in the vehicle, around the racetrack, or held by another spectator at the auto race. In the Final Office Action, official notice was taken that recording images and voices during operation of an automobile by a camera inside the automobile in a car race was well-known in the art. It was also maintained that it allegedly would have been obvious to modify the combination of Verna and Urella to include auto racing recorded video and audio signals. The undersigned strenuously disagrees and strongly traverses this rejection. Neither Verna nor Urella discuss any application related to auto racing. Nor does the '119 provisional application discuss any application related to auto racing. Verna's device is intended for sports officials for reviewing sporting events of certain types, namely where the officials are located on the field and need to review a play "in a matter of seconds". There is no need for Verna's type of device by officials at an auto race as officials at auto races have direct access to TVs and are not on the track. Regardless of whether or not recorded images and voices are obtained at auto races, it does not follow that the claimed invention is obvious. Simply because recorded images and voices are available during auto races, it does not follow that it would have been obvious to modify Verna's system in a manner that would be used at an auto race. No reason exists to make the suggested modification. Similarly, there is no suggestion or reason to use the monocular device describe in the '119 provisional application at an autorace. Nor is there any reason to add audio capability to the monocular device described in the '119 provisional application, particularly where the audio signals relate to an auto race.

It is respectfully submitted that the leap from utilizing the monocular device in the '119 provisional application (or the system of Verna) to the claimed invention is not suggested in the prior art and cannot be justified by reliance on Official Notice. As set forth in MPEP section 2144.03, Official Notice of facts should be judicially applied. Official Notice should be relied on only rarely when an application is under final rejection. Official Notice unsupported by documentary evidence should only be taken by the examiner with the facts asserted to be well known or to be common knowledge in the art are capable of instant and unquestionable demonstration of being well-known. It is respectfully submitted that in the present case, this is

not the situation. Therefore, it is respectfully requested that if Official Notice is taken, documentary evidence be provided in connection with the present issue during the first Office Action in the present application.

Moreover, it is respectfully submitted that a prima facie case of obviousness was not set forth with respect to the claims concerning the audio and image signals of an auto race. In the outstanding Office Action in the parent application, it was maintained that it would have been obvious to include in Verna and Urella's systems the recorded video and audio signals by cameras located in an automobile "in order to provide the images and voices of a particular driver during a car race." It is submitted that this motivation is not provided within the prior art and that the rejection is instead based upon improper hindsight. As provided in MPEP section 2142, to establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. In the outstanding Office Action there is no suggestion or motivation in the references themselves, nor in the knowledge generally available to one of ordinary skill in the art.

In view of the foregoing, it is respectfully submitted that the pending claims define allowable subject matter. Should anything remain in order to place the present application in condition for allowance, the examiner is kindly invited to contact the undersigned at the telephone number listed below.

Respectfully Submitted,



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Proprietary Information

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Presentation to Mr. Billy Jones

- *HMD demonstration*
- *Business model*
- *Business plan implementation*
- *Financial requirements*
- *Unknowns*
- *Risks*
- *Elements of a successful start-up*

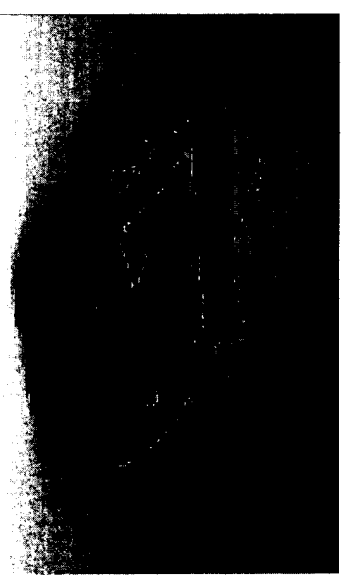
Presentation to Mr. Billy Jones

- *HMD demonstration*
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HMD Demonstration

- ***i - Glasses***TM

- NTSC video, dc power
- Adjustable headband, weighs 8 oz
- Stereo sound with 3-D capability
- Two 320 pixel x 240 pixel (1/4 VGA) LCDs
- \$580 retail/PC Connectivity \$225 additional
- 40,000 sold @ \$800 prior to Chapter 11
- Estimated manufactured cost \$200-300



- ***Video of Racecam footage, 3-D video and 3-D animation***

Presentation to Mr. Billy Jones

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Business Model

- *Innovative concept that capitalizes on a unique opportunity*
- *Off-the-shelf technology requires minimal design effort*
- *Initial market has restricted entry to eliminate competition*
- *Staged implementation to minimize investment risk*
- *Significant revenue generation within 9-12 months*
- *Provides entrée into a dynamic market with long term growth*

Proprietary Information

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Innovative Business Concept

- *Head Mounted Display (HMD) rental at racetracks*
- *Provide Racecam video to fans to place them closer to the action*
- *Capitalize on the Racecam video signal that exists at every race*
- *Minimal hardware development (ruggedize existing components)*
- *High HMD unit cost issue is negated by unit rentals*
- *Large off track market for sale of HMD's and pay-per-view*
- *Entrée into cable TV, DBS, Web TV and DVD sales/rentals*

Off-the-Shelf Technology

- *NTSC quality HMDs currently exist (i-Glasses™ etc.)*
- *Incorporating improved LCD's or circuitry is low risk*
- *Minimal effort to design a ruggedized "rental" enclosure*
- *Will procure "walkman" style TV tuner with proper frequencies*
- *Rechargeable Lithium Hydroxide battery packs are available*
- *Graphic overlay development is minimal*
- *Can receive direct signal or re-transmit feed from control van*

Revenue generation within 9-12 months

- Assume: (using 1998 NASCAR schedule)
 - @ \$500-\$800 cost per unit
 - \$50/race rental fee (50 channel radio scanner is \$35/day)
 - Initially at NASCAR races only (Winston & Busch Series)
 - 59 races (35 Winston & 18 Busch races on Saturday + 6 extra Busch races)
- Rental revenue per HMD which is rented for all 59 races is \$2,950
- Gross rental revenue per season for 1,000 units - \$ 2,950,000
- Gross rental revenue per season for 5,000 units - \$14,750,000
- Gross rental revenue per season for 10,000 units - \$29,500,000
- Gross rental revenue per season for 15,000 units - \$44,250,000

-----Original Message-----

From: Mark Wood <markalanwood@worldnet.att.net>

To: sjochssr@earthlink.net <sjochssr@earthlink.net>

Date: Monday, June 29, 1998 8:04 PM

Subject: Update to HMD Presentation

Steve - Here is an update of the presentation. Let me know what you think. Any luck contacting Billy Jones?

Mark

-----Original Message-----

From: Mark Wood <markalanwood@worldnet.att.net>

To: Imagesys33@aol.com <Imagesys33@aol.com>

Date: Wednesday, July 01, 1998 10:30 AM

Subject: Latest Update

Oliver - Sorry I have been late in getting back to you, but I have been working around the clock getting everything ready. I have completed a Power Point presentation (70 pages) that covers everything from soup to nuts regarding the opportunity. Have also put together a video tape showing racecam in car footage at Road Atlanta, Mid-Ohio during a race, NASCAR Pocono 500 during a race, 3-D animation and stereoscopic 3-D video that I ordered. Even with the poor resolution of the i-glasses, it is impressive if you have never seen an HMD presentation.

We have our meeting with the potential investor on Tuesday at 6 P.M. He owns a fiberoptic cable installation company that installs fiber optic cable nationwide for Cable TV companies and phone companies. He also owns a couple of cable TV stations in Virginia, and he is a former NASCAR driver. He also owns the NASCAR team that his son races for, so we couldn't ask for a better opportunity. We haven't told him the details, just that we have a business opportunity that involves NASCAR, high technology, Cable TV and the content development, and he went crazy. Keep your fingers crossed.

Will begin very shortly to develop the product definition for the HMD. Will be considering a variety of things that we must consider including but not limited to:

Cost

Resolution of LCD's

brightness outdoors

shielding the image from the sun

power requirements and batteries

3-D capability

weight

adjustability

hygiene

eyeglass compatibility

exposure to the elements

ruggedness

how to receive the racecam signal

how many channels in the receiver

repairability/maintainability

FCC requirements

styling

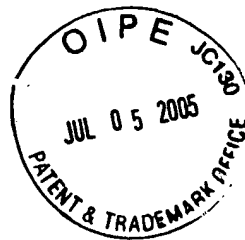
other ergonomic issues (head up/head down/flip up/how it rests on head, etc.)

It is my intention to have DisplayWear and IDA work very closely on the design. I think the combined capabilities and experiences of the two companies will provide some great synergy.

Re your comment about transmissive LCD's and ordering in quantities of 100,000, what type of price break would we see if we ordered that many? My mind is going a million miles an hour thinking about all the possibilities. I will keep you advised of the results of this first meeting. As soon as we are funded it is my intention to fly out to the Bay area so we can sit down and finalize everything.

Have a great 4th of July.

Mark



-----Original Message-----

From: Mark Wood <markalanwood@worldnet.att.net>
To: Imagesys33@aol.com <Imagesys33@aol.com>
Date: Thursday, July 02, 1998 2:04 PM
Subject: Re: Several Questions

>Oliver - Only got part of your message. The rest didn't come through.

>

>What I envision eventually is a retransmitting the racecam signals from
>the 7-15 or so cars as a multiplexed signal on a carrier freq that is
>received by the individual unit w/HMD. The user then selects the
>desired car of choice which is demultiplexed from the carrier. This
>enables the user the option to be in any car, as opposed to having
>units tuned only to a
specific

>car. I am not a communications engineer, so I know just enough to be
>extremely dangerous. I do realize that we are looking at FCC licensing
>of this rebroadcast signal at the track unless we can keep the power
>down so that Part 15 applies. I'm not sure that that is possible, but
>a site license for just the one or two days that we are at the track
>should not be very expensive. I don't have too much of an idea about
>the cost of the transmission set-up, but we are obviously looking at
>some type of control van setup. That is why I like the idea of staging
>the introduction by staying in the luxury boxes at first so we can
>hardwire the existing output from the TV production control van to
>patchpanels in the boxes and direct wire the HMDs so that they can
>selectively switch between cameras just like you switch between
>channels on an airline flight.

>

>Mark

>-----Original Message-----

>From: Imagesys33@aol.com <Imagesys33@aol.com>
>To: markalanwood@worldnet.att.net <markalanwood@worldnet.att.net>
>Date: Thursday, July 09, 1998 1:54 PM
>Subject: Re: Several Questions

>

>

>>I am working on getting information by Friday.

>>

>>One thing in your last email was interesting:

>>

>>"5. Any guesses on the power requirements for the HMD? I have a pretty
good

>>idea on the TV receiver requirements, but I will need the HMD power

>>usage

>to

>>estimate battery/power supply needs and thus costs."

>>

>>I think I have a different notion of what the system is than you do,

>>and I

>am

>>trying to come into synch.

>>

>>So I have questions.

>>
>>
>>1. Trying to understand what you are thinking of in saying "the TV
>receiver
>>requirements".
>>
>>I infer you are thinking of using a cheap color battery-powered TV
receiver
>as
>>your man-pack radio receiver.
>>
>>
>>the HMD as a sort of channel-4 TV receiver, taking in channel-4
>>composite
>TV
>>signal and displaying sound and imagery.
>>
>>
>>1. Assume the HMD is made so it is just a channel-4 TV receiver. I
>>think this
>>
>